U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: WASHINGTON, DC Date: MAY 07 2004

IN RE: [redacted]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Washington, DC, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who is seeking to adjust his status to that of a lawful permanent resident under section 13 of the Immigration and Nationality Act (the Act) of 1957, Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(i) of the Act. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on January 6, 1988. The Form I-485 application was denied on October 24, 1994. On November 22, 1994, the applicant filed a timely appeal with the AAO. On July 18, 1996, the AAO dismissed the applicant's appeal. On June 2, 1998, the applicant filed a second From I-485 application.

The district director denied the application for adjustment of status after determining that the applicant had failed to establish compelling reasons why he was unable to return to the country of accreditation and why his adjustment would be in the national interest of the United States. The district director further determined that the applicant failed to establish that the duties he performed during the course of his employment were diplomatic or semi-diplomatic in nature. *See* Decision of the District Director, dated June 7, 2001. The AAO notes that the applicant did not receive the decision of the district director mailed to the applicant in June 2001. The district director, therefore, subsequently reissued his decision. *See* Decision of the District Director, reissued August 27, 2003.

On appeal, counsel contends that the district director erred in his decision because the applicant performed diplomatic and semi-diplomatic duties for the Consulate of the Philippines in Seattle, Washington from November 1985 until his resignation in August 1987. Counsel further asserts that there are compelling reasons why the applicant and his family cannot return to the Philippines and that the national interests of the United States would clearly be served by adjusting the status of the applicant and his family members. *See* Form I-290B, dated July 24, 2003.

The record contains a letter from the Assistant Chief of Protocol of the U.S. Department of State, dated August 29, 2996; a letter from a physician regarding the allergies suffered by the applicant's son, dated December 17, 1998; letters of support from friends and neighbors; a copy of a Foreign Service Officer Overview compiled by the U.S. Department of State (DOS); a copy of a DOS public notice designating foreign terrorist organizations, dated August 9, 2002; a letter from a retired ambassador of the Philippines, dated November 9, 1994 and a copy of a Board of Immigration Appeals (BIA) decision, dated June 28, 2000.

Section 13 of the Act of September 11, 1957, as amended on December 29, 1981, by Pub. L. 97-116, 95 Stat. 1161, provides, in pertinent part:

> (a) Any alien admitted to the United States as a nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or (ii) or 101(a)(15)(G)(i) or (ii) of the Act, who has failed to maintain a status under any of those provisions, may apply to the Attorney General [now Secretary of Homeland Security (Secretary)] for adjustment of his status to that of an alien lawfully admitted for permanent residence.
>
> (b) If, after consultation with the Secretary of State, it shall appear to the satisfaction of the Attorney General [Secretary] that the alien has shown compelling reasons demonstrating both that the alien is unable to return to the country represented by the

> government which accredited the alien or the member of the alien's immediate family and that adjustment of the alien's status to that of an alien lawfully admitted for permanent residence would be in the national interest, that the alien is a person of good moral character, that he is admissible for permanent residence under the Immigration and Nationality Act, and that such action would not be contrary to the national welfare, safety, or security, the Attorney General [Secretary], in his discretion, may record the alien's lawful admission for permanent residence as of the date [on which] the order of the Attorney General [Secretary] approving the application for adjustment of status is made.

Pursuant to 8 C.F.R. § 245.3, eligibility for adjustment of status under section 13 of the Act is limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government which accredited the applicant, and that adjustment of the applicant's status to that of an alien lawfully admitted to permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under section 13.

Counsel contends that the applicant performed diplomatic and semi-diplomatic duties in his capacity with the Consulate General of the Philippines in Seattle, Washington. Counsel offers an affidavit from the former Counsel General of the Philippines in Seattle, Washington to support his assertion. *See* Affidavit of Ernesto A. Querubin. Counsel also asserts that the applicant "manifestly engaged in promoting friendly relations between The Philippines and the United States, and developing their economic, cultural and scientific relations." *See* Memorandum in Support of Notice of Appeal and Motion for Reconsideration, dated August 18, 2003 (quoting Article 3 of the Vienna Convention on Diplomatic Relationships).

The AAO finds that contrary to the determination of the district director, the applicant does establish that his duties were of a semi-diplomatic nature. 8 C.F.R. § 245.3 provides, "Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under section 13." The submitted affidavit establishes that the applicant's duties entailed more than those of a clerical, menial or custodial nature. The applicant participated in organizing parties and functions for high-ranking officials from the United States and foreign consulates; served as a representative of the Consulate; performed public relations duties throughout the Pacific Northwest and responded to inquiries regarding trade and tourism matters affecting the Philippines. *See* Affidavit of Ernesto A. Querubin. The applicant performed semi-diplomatic functions in his capacity at the Consulate General of the Philippines in Seattle, Washington and therefore, meets the eligibility threshold for consideration under section 13 of the Act of 1957.

Next, counsel contends that the applicant demonstrates compelling reasons why he and his family cannot return to the Philippines. Counsel asserts that the applicant's son has lived his entire life in the United States, is a United States citizen and suffers from allergies and associated medical problems that are better treated in the United States. *See* Memorandum in Support of Notice of Appeal and Motion for Reconsideration, dated August 18, 2003. *See also* Letter from Gail G. Shapiro, MD, dated December 17, 1998. Counsel further offers letters from a former employer and friend of the applicant attesting to the fact that relocation to the Philippines would impose hardship on the applicant's son owing to the differences in culture, education and climate. *See* Letter from Anna Querubin, dated August 15, 2003. Counsel asserts that extreme hardship is

often found in the circumstances of children pointing to the BIA's decision in a suspension of deportation application to support his assertions. *See In Re: Pey-Lin Shih*, dated June 28, 2000. Further, counsel contends that the applicant and his family would face the threat of terrorist persecution by the New Peoples Army if they returned to the Philippines. *See* Memorandum in Support of Notice of Appeal and Motion for Reconsideration at 9-11.

While counsel's assertions establish inconvenience to the applicant and his family posed by the denial of the applicant's Form I-485 application, the assertions do not amount to compelling reasons within the meaning of section 13 of the Act of September 11, 1957. Counsel parallels the situation of the applicant's son to that of the children presented to the BIA in a suspension of deportation case, but does not provide case law to support the proposition that the standard of "extreme hardship" weighed in suspension of deportation cases is analogous to the need to establish "compelling reasons" under section 13 of the Act. As evidenced by the legislative history of the statute, congressional intent in amending the Act was to ensure that high-ranking government officials and their immediate families were not rendered homeless and stateless owing to uprisings, aggression or invasion in their respective countries of accreditation. See 103 Cong. Rec. 14,660 (1957)(statement of Senator Kennedy). The record does not establish that the applicant and his family are unable to return to the Philippines for reasons recognized as compelling by Congress in enacting the law. Counsel's assertions regarding the threat of harm to the applicant and his family by the New Peoples Army are too attenuated and non-particularized to constitute a compelling reason within the meaning of the statute. Counsel does not establish that the applicant's position with the Consulate General of the Philippines in Seattle, Washington over a decade ago places him at risk as a target of political persecution in his home country.

Since the applicant has failed to establish compelling reasons that he and his family cannot return to his home country, a determination will not be made as to whether the applicant's adjustment would be in the national interest of the United States.

Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is upon the applicant to establish that he is eligible for adjustment of status. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.